



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 18, 1998

Ms. Peg Liedtke
Executive Secretary
Court Reporters Certification Board
P.O. Box 13131
Austin, Texas 78711-3131

OR98-2238

Dear Ms. Liedtke:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118263.

The Court Reporter's Certification Board (the "board") received a request for the names and addresses of individuals who have received notice that their license, permit, or application has been denied, or is subject to revocation, suspension or disciplinary action, and the matter is still pending before the board. The requestor also asked for copies of notices of contested case proceedings. You submitted to this office for review, as responsive to the request, notices of hearings. These notices were sent to the individuals about whom complaints were filed. You ask if section 552.103(a) is applicable to these records, in light of Attorney General Opinion DM-142 (1992).

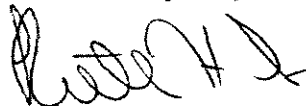
To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated, and also that (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Contested cases that are held under the Administrative Procedure Act (the "APA") constitute litigation for purposes of showing the first prong of section 552.103(a). Open Records Decision No. 588 at 7 (1991) (construing statutory predecessor to the APA). You ask whether contested hearings held by the board are pending litigation as contemplated by Open Records Decision No. 588 (1991), when Attorney General Opinion DM-142 (1992) concluded that the board is not subject to the statutory predecessor to the APA.

We note initially that section 552.103(a) provides that a governmental body can show either that it reasonably anticipates litigation or that litigation is pending, in order to satisfy

the first prong of the section 552.103(a) test. Thus, even if the board is unable to show that it is engaged in pending administrative litigation as contemplated under Attorney General Opinion DM-142 (1992), the board might still be able to meet the first prong of section 552.103(a). However, section 552.103(a) is generally inapplicable when the other party to anticipated or pending litigation has had access to the records at issue. Open Records Decision Nos. 349 (1982), 320 (1982). We have reviewed the submitted documents and conclude that there is no section 552.103(a) protection for these documents because they have been seen by the other parties in the hearings. Thus, the records at issue must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Ruth H. Soucy', with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 118263

Enclosures: Submitted documents

cc: Mr. Kevin Blandford
5217 Kings Highway
Austin, Texas 78745
(w/o enclosures)